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INSIGHT HOSPITAL	:	
AND MEDICAL CENTER CHICAGO,	:	
	:	Case No. 23 cv 14328
Plaintiff,	:	
	:	
v.	:	
	:	
XAVIER BECERRA,	:	
Secretary of Health and Human Services, and	:	
HEALTH RESOURCES AND	:	
SERVICES ADMINISTRATION,	:	
	:	
Defendants.	:	
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**EMERGENCY MOTION FOR MANDAMUS OR, IN THE ALTERNATIVE,
INJUNCTIVE AND DECLARATORY RELIEF**

Pursuant to Fed. R. Civ. P. 65 and 57, and LCvR 77.2, Insight Hospital and Medical Center Chicago (“Insight”) hereby moves this Court to issue a Writ of Mandamus, or in the alternative, a Preliminary Injunction determining that Defendants Xavier Becerra, in his capacity as Secretary of Health and Human Services (“Secretary”), and the Health Resources and Services Administration (“HRSA”), are required to refrain from terminating Insight’s participation in the Section 340B program as of October 1, 2023 and accept Insight’s recertification for participation in the Section 340B program 42 U.S.C. § 256b.

As explained in Insight’s memorandum of law, HRSA lacks the authority under Section 340B to require that a disproportionate share hospital recertify its eligibility for the 340B program; even if Insight can be required to recertify, HRSA lacks the authority to terminate Insight’s participation in the Section 340B program for not meeting an arbitrary deadline that conflicts with the plain language of the statute.

Even assuming that Insight was required to recertify, it had one year from September 19, 2022 to recertify its eligibility to obtain discounted outpatient drugs. However, on September 11, 2023, eight days before the period specified in the statute, HRSA cut off Insight's ability to submit its recertification and notified Insight on September 18, 2023 that its participation in the Section 340B program was terminated as of October 1, 2023. HRSA had no authority to require that Insight recertify more frequently than annually.

Although the Secretary will suffer no harm, without relief this decision will have an immediate and detrimental impact on Insight and on a Chicago neighborhood that depends heavily on the discounted prescription drugs and free care that Insight is able to provide through costs savings from the 340B program. As a result of the Secretary's failure to comply with the law, Insight will be forced to pay extraordinary sums for the drugs its patients need, or divert scarce resources away from other necessary health services to pay for those drugs. Insight has no remedy at law.

Insight seeks a writ of mandamus and injunctive relief barring the Secretary from excluding Insight from participating in the Section 340B program. In the alternative, it seeks and order that HRSA must accept Insight's recertification filing, and an injunction pendente lite barring the Secretary from terminating Insight from the Section 340B program effective October 1, 2023.

Dated: September 29, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

James J. Oh, an attorney, hereby certifies that, on September 29, 2023, he caused a copy of the foregoing *Emergency Motion for Mandamus Or, In The Alternative, Injunctive And Declaratory Relief* to be served via email upon the following parties:

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